

County Solid Waste Disposal Financing Law

40:66A-31.1. Short title

This act shall be known and may be cited as the "County Solid Waste Disposal Financing Law" .

P.L. 1970, c. 242, § 1, eff. Oct. 28, 1970.

40:66A-31.2. Public policy

It is hereby declared to be in the public interest and to be the policy of the State to foster and promote by all reasonable means the health and welfare of the citizens thereof by the proper collection, treatment and disposal of solid waste and other refuse matter on a regional or multi-unit basis.

P.L. 1970, c. 242, § 2, eff. Oct. 28, 1970.

40:66A-31.3. Definitions

As used in this act, unless a different meaning clearly appears from the context:

(1) The word "county" shall mean any of the several counties of the State operating under the authority granted by this act.

(2) The term "board of chosen freeholders" or the word "board" shall mean the board of chosen freeholders of any county operating under the powers granted by this act.

(3) The term "solid waste disposal facilities" shall mean the plants, structures and other real and personal property acquired, constructed or operated or to be acquired, constructed or operated by a county, municipality, municipal utilities authority or incinerator authority, including incinerators, sanitary landfills or other plants and property for the treatment and disposal of solid waste and all other real and personal rights therein and appurtenances necessary or useful and convenient for the collection, treatment or disposal in a sanitary manner of solid waste (but not including sewage).

(4) The word "facilities" when used alone, shall mean both such incinerators and sanitary landfills, or either of them as the context shall require.

(5) The word "cost" as applied to solid waste disposal facilities or extension or additions thereto, shall include the cost of construction, reconstruction or improvement, the cost of all labor, materials, machinery and equipment, the cost of all lands, property, rights, easements and franchises acquired, financing charges, interest on bonds issued to finance such facilities prior to and during construction and for 1 year after completion of construction, cost of plans and specifications, surveys of estimates of costs and of revenues, cost of engineering and legal services, and all other expenses necessary or incident to determining the feasibility or practicability of such construction, reconstruction or improvement, administrative expense and such other expense as may be necessary or incident to the construction or acquisition of such facilities, and the

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financing herein authorized. Any obligation or expense incurred by the county in connection with any of the foregoing items of cost prior to the issuance of bonds or notes as authorized herein may be regarded as part of such cost and reimbursed to the county out of the proceeds of bonds issued under the provisions of this act.

(6) The term "general obligation bonds" shall mean general obligations of the county which are payable from unlimited ad valorem taxes or from such taxes and additionally secured by a pledge of solid waste disposal facilities service charges as may be established.

(7) The term "solid waste" shall mean any refuse matter, trash or garbage from residences, manufacturing and industrial plants, hotels, apartments or any other public or private building but shall not include water carried wastes or the kinds of wastes usually collected, carried away and disposed of by sewerage system.

(8) The word "commissioner" shall mean the State Commissioner of Environmental Protection.

(9) "Authority" shall mean an incinerator authority created under P.L.1948, c. 348 (C. 40:66A-1 et seq.) or a municipal utilities authority created by a county under P.L.1957, c. 183 (C. 40:14B-1 et seq.).

P.L. 1970, c. 242, § 3, eff. Oct. 28, 1970. Amended by L.1971, c. 442, § 3, eff. Feb. 15, 1972.

40:66A-31.4. Powers of county

Any county in the State which may hereafter come under the provisions of this act as hereinafter provided is hereby authorized and empowered:

(1) To purchase, construct, improve, extend, enlarge or reconstruct solid waste disposal facilities within such county either alone or jointly with any municipality, joint meeting or authority located within such county, and in accordance with applicable law, rules, regulations or orders, to operate, manage and control all or part of such solid waste disposal facilities so purchased or constructed and all properties pertaining thereto, and to furnish and supply the services of its solid waste disposal facilities to any municipalities within such county. No county shall furnish any of the facilities provided by this article to any property already being furnished like facilities by any municipality, joint meeting or authority, without the express consent of such joint meeting or authority or the governing body having general legislative authority in the government of such municipality;

(2) To issue general obligation bonds of the county to pay all or part of the cost of such purchase, construction, improvement, extension, enlargement or reconstruction of such facilities;

(3) To fix and collect rates, fees, rents and other charges for the services and facilities furnished by any such county solid waste disposal facilities;

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(4) To receive and accept from the State, Federal Government or any agency thereof grants for or in aid of the planning, purchase, construction, extension, enlargement or reconstruction, or financing of any of such facilities and to receive and accept contributions from any source of either money, property, labor, or other things of value to be held, used and applied only for the purposes for which such grants and contributions may be made;

(5) To acquire in the name of the county by gift, purchase as hereinafter provided, or by the exercise of the right of eminent domain, such lands and rights and interests therein, within the county, other than that owned by any governmental unit or political subdivision thereof without its express consent, and to acquire such personal property, as it may deem necessary for the purchase, construction, improvement, extension, enlargement or reconstruction, or for the efficient operation of any facilities purchased or constructed under the provisions of this act and to hold and dispose of all real and personal property under its control;

(6) To make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this act subject to P.L.1971, c. 198 "Local Public Contracts Law" (C. 40A:11-1 et seq.) and to employ such consulting and other engineers, superintendents, managers, attorneys, financial or other consultants or experts and such other employees and agents as it may deem necessary in its judgment and to fix their compensation;

(7) Subject to the provisions and restrictions as may be set forth in the ordinance hereinafter mentioned authorizing or securing any bonds issued under the provisions of this act, to enter into contracts with the government of the United States or any agency or instrumentality thereof or with any other county or with any municipality, private corporation, copartnership, association, or individual providing for or relating to the collection, treatment and disposal of solid waste, which contracts may provide for the furnishing of solid waste disposal facilities either by or to the county, or the joint construction or operation of solid waste disposal facilities;

(8) To acquire by gift or purchase at a price to be mutually agreed upon, any of the facilities or portions thereof, provided for by this act, which shall, prior to such acquisition, have been owned by any private person, group, firm, partnership, association or corporation; provided, however, if the price for same cannot be agreed upon, the price shall be determined by an arbitration board consisting of three persons, one of whom shall be selected by the board of chosen freeholders, one shall be appointed by the private company or corporation, and the two persons so selected shall select a third member of said board; and provided, further, that in the event said board cannot agree as to the price to be paid by the said board of chosen freeholders, then the board of chosen freeholders shall exercise the right of eminent domain in the manner provided by law.

P.L. 1970, c. 242, § 4, eff. Oct. 28, 1970. Amended by L.1971, c. 442, § 4, eff. Feb. 15, 1972; L.1975, c.96, § 12, eff. May 16, 1975.

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40:66A-31.4a. Condemnation; declaration of taking; deposit in court; vesting title; transfer of possession; service of notice of filing; determination of compensation

On or after the institution of an action by a county for condemnation of property and to fix the compensation to be paid for such property, pursuant to the act to which this act is a supplement, the county may file with the Clerk of the Superior Court a declaration of taking, signed by the duly authorized county official, declaring that all or any part of such property described in the petition is being taken by and for the use of the county. The declaration of taking shall set forth (1) a description of such tract or parcel of property to be taken, to which there may be attached a plan or map thereof; (2) a statement of the estate or interest in the said property being taken; and (3) a statement of the sum of money estimated by the county to be just compensation for the property taken, which sum shall not be less than the last assessed valuation for tax purposes of the estate or interest in the property to be taken.

Upon the filing of the aforesaid declaration of taking and the deposit in court to the use of the persons entitled thereto, of the sum of money estimated by the county to be just compensation for the property taken as stated above, title to the property described as being taken by said declaration shall vest in the county (free from the right, title, interest or lien of all persons), and said property shall be deemed to be condemned and taken for the use of the county and the right to just compensation for the same shall vest in the persons entitled thereto.

Upon the filing of the declaration of taking and the making of the deposit as aforesaid, the court shall designate a day not exceeding 90 days after such filing, except for good cause shown, on which persons in possession shall be required to surrender possession to the county.

Upon the expiration of the period designated by the court as herein provided, the county, without other process or proceedings shall be entitled to the exclusive possession and use of each tract or parcel of property described in the declaration and may forthwith enter into and take possession of said property, it being the intent of this provision that the action to fix the compensation to be paid or any other proceeding relating to the taking of such property or entering therein shall not delay the taking of possession and the use thereof by the county for purposes authorized by the act to which this act is a supplement. The county shall not abandon any condemnation proceeding pursuant to this act subsequent to the date upon which it has taken possession of the property as herein provided.

The county shall cause notice of the filing of said declaration of taking and the making of said deposit to be served upon each party to the action to fix the compensation to be paid, who resides in this State, either personally or by leaving a copy thereof at his dwelling house or usual place of abode, and upon each such party who resides out of the State by mailing notice thereof to him at his usual place of abode if known. In the event that the usual place of abode of any such party or the name of such party is unknown, such notice shall be published at least once in a newspaper published or circulating in the county in

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which the property is located. Such service, mailing or publishing, shall be made within 30 days after the filing of the declaration.

Any party in interest after notice to other parties in interest, including the county, may make application to a judge of the Superior Court who may order that the money deposited with the Clerk of the Superior Court, or any part thereof, be paid forthwith to the person or persons entitled thereto for or on account of the just compensation to be awarded in said proceeding; provided, that each such person shall have filed with Clerk of the Superior Court a consent in writing and such security as may be required by the court that, in the event the award in the condemnation proceeding shall be less than the amount deposited, the court, after notice and hearing as herein provided, may determine the liability, if any, for the return of such difference or any part thereof and enter judgment therefor.

The ultimate amount of compensation shall be determined pursuant to the Eminent Domain Act of 1971, P.L.1971, c. 361 (C. 20:3-1 et seq.). If the amount so fixed shall exceed the amount so deposited in court by the county or otherwise paid to the persons entitled thereto, the court shall enter judgment against the county in the amount of such deficiency, together with interest at the legal rate on such deficiency from the date of the vesting of title to the date of the entry of the final judgment (subject, however, to abatement for use, income, rents or profits derived from such property by the owner thereof subsequent to the vesting of title in the county), and the court shall order the county to deposit the amount of such deficiency in court. The money deposited into court by a county shall be secured in such manner as may be directed by the court and shall be disbursed according to the order or judgment of the court to the persons found to be entitled thereto by the final award or judgment of the court. In case the amount deposited in court by the county as the estimated compensation for the property shall exceed the amount of the award or judgment, such excess shall be returned to the county unless the amount of the deposit or any part thereof shall have been distributed as aforesaid, in which event, the court, on petition of the county and notice to all persons interested in the award and affording them an opportunity to be heard, shall enter judgment in favor of the county for such difference against the party or parties liable for the return thereof. The county shall cause notice of the date, fixed for such hearing, to be served upon each party thereto residing in this State in accordance with the requirements of the laws of this State relating to service of process. In the event that the residence of any party or the name of any party is unknown, such notice shall be published at least once in a newspaper published or circulating in the county. Such service, mailing or publication, shall be made at least 10 days before the date fixed for such hearing.

P.L. 1977, c. 319, § 1, eff. Jan. 10, 1978.

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40:66A-31.5. Resolution to exercise powers by board of chosen freeholders; approval by commissioner; replacement or repair of damaged property

Whenever the board of chosen freeholders of any of the several counties of the State by resolution chooses to exercise the powers granted by this act it shall submit such resolution to the State Commissioner of Environmental Protection, and it shall make or cause to be made such surveys, investigations, studies, borings, maps, plans, drawings, and estimates of costs and of revenues as the commissioner may deem necessary relating to the type of disposal and treatment and estimate or cost of such solid waste disposal facilities, the purchase of construction of which shall be deemed by the board to be desirable and also relating to the solid waste disposal facilities, if any, or part thereof the board deems necessary to purchase or construct, to protect the health, safety, and welfare of the inhabitants of the county.

The obtaining of such surveys, investigations, studies, borings, maps, plans, drawings and estimates is hereby declared to be a county purpose and the costs thereof may be paid out of the general funds of the county, but shall be reimbursed to the county from the proceeds of any bonds issued pursuant to this act, or the proceeds of any grants for this purpose from the State, Federal Government or any agency thereof.

The results of such surveys, investigations, studies, borings, maps, plans, drawings and estimates required by the commissioner shall be submitted to the commissioner for approval. No county may proceed to exercise any of the powers granted by this act without first having obtained the approval of the commissioner.

All public or private property damaged or destroyed in carrying out the powers granted by this act shall be restored or repaired and placed in its original condition as nearly as practicable or adequate compensation made therefor out of the funds provided by this act.

P.L. 1970, c. 242, § 5, eff. Oct. 28, 1970.

40:66A-31.6. Bonds; ordinance; issuance; use of proceeds; pledge of revenue for repayment

The board of chosen freeholders is hereby authorized to provide by ordinance at one time or from time to time for the issuance of general obligation bonds of the county for the purpose of paying all or part of the cost of any solid waste disposal facilities constructed, acquired, improved, extended, enlarged or reconstructed pursuant to this act. The bonds of each issue shall be issued pursuant to the provisions of the Local Bond Law, constituting chapter 2 of Title 40A of the New Jersey Statutes.

The proceeds of such bonds shall be used solely for the payment of costs of the solid waste disposal facilities for the purchase, construction, reconstruction, enlargement or improvement of which such bonds shall have been authorized.

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The board of chosen freeholders may also pledge to the payment of any or all of such bonds so issued all or any part of the revenues derived by the county from the operation or rental of its solid waste disposal facilities.

P.L. 1970, c. 242, § 6, eff. Oct. 28, 1970.

40:66A-31.7. Contracts

A county may negotiate and enter into contracts, with municipalities within or adjoining its boundaries, joint meetings, authorities and on uniform terms with all private solid waste disposal companies operating in the county or proposing to operate therein and in an adjoining county or counties, or either thereof, and may negotiate and enter into like contracts with any other municipality or on such uniform terms with any private solid waste disposal company which might advantageously use the solid waste disposal facilities of the county, and may negotiate and enter into like contracts with persons or corporations engaged in public or private industry (herein called "industry" or "industries") within its boundaries who or which shall be discharging solid waste which cannot conveniently be disposed of through the solid waste disposal system of any municipality or private solid waste disposal company.

P.L. 1970, c. 242, § 7, eff. Oct. 28, 1970. Amended by L.1971, c. 442, § 5, eff. Feb. 15, 1972.

40:66A-31.8. Rates or rentals

After the commencement of operation of solid waste disposal facilities, the county may prescribe and change from time to time rates or rentals to be charged for the use of the services of such facilities. Such rates or rentals being in the nature of use or service charges or annual rental charges, shall be uniform and equitable for the same type and class of use or service of such facilities. Such rates or rentals and types and classes of use and service may be based on such factors as the board of chosen freeholders of the county shall deem proper and equitable.

P.L. 1970, c. 242, § 8, eff. Oct. 28, 1970.

40:66A-31.9. Financing by county pursuant to agreement with municipality, joint meeting or authority

If a county, pursuant to agreement with a municipality or municipalities therein, joint meetings or authorities, shall construct or acquire solid waste disposal facilities which will benefit such municipality or municipalities, joint meetings or authorities, such county may either (1) bear the entire cost of the construction or acquisition of such facilities by itself, or (2) share the cost of the construction or acquisition of such improvements with the municipality or municipalities, joint meetings or authorities. The county may issue its bonds for all or part of the cost of the construction or acquisition of

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such facilities. If the cost thereof is to be shared by such municipality or municipalities, joint meetings or authorities, the county may issue its bonds for its share of such cost and such municipality or municipalities, joint meetings or authorities, may issue their bonds for their share of such cost, or the county may issue its bonds for all of the cost of such facilities, and the share of such cost to be borne by such municipality or municipalities, joint meetings or authorities shall be repaid to the county by such municipality or municipalities, joint meeting or authority in annual installments over a period not exceeding 40 years as shall be agreed upon between the county and such municipality or municipalities, joint meeting or authority. The amount of said annual installments shall include interest at such rate or rates as the county and such municipality or municipalities, joint meeting or authority shall agree upon, and the county and such municipality or municipalities, joint meeting or authority are hereby authorized to enter into agreements relating to such facilities which agreements shall have such terms and conditions as shall be deemed necessary and proper by such county and such participating municipality or municipalities, joint meeting or authority. Such agreements shall be authorized by a resolution duly adopted by the board of chosen freeholders of the county and by an ordinance duly adopted by the governing body of such municipality, municipalities, joint meeting or authority. Such annual payments received by a county from such municipality, municipalities, joint meeting or incinerator authority may also include an additional annual amount as shall be agreed upon for the payment of the agreed share of the cost of operation and maintenance and improvement or enlargement of such facilities. Notwithstanding any provisions of any other law or laws now existing or hereafter enacted, none of such annual payments to be made by such municipality, municipalities, joint meeting or authority to such county shall be included in any computation of gross or net indebtedness required under any such other law or laws.

Notwithstanding any provisions of any other law or laws now existing or hereafter enacted, the amount of any bonds issued by a county to finance the share of any municipality, municipalities, joint meeting or authority of the cost of the construction or acquisition of such facilities shall not be included in any computation of gross or net indebtedness under any such other law or laws as long as such county and such municipality, municipalities, joint meeting or authority have entered into an agreement pursuant to this section under which the share of such municipality, municipalities, joint meeting or authority shall be repaid to such county as provided in this section.

P.L. 1970, c. 242, § 9, eff. Oct. 28, 1970. Amended by L.1971, c. 442, § 6, eff. Feb. 15, 1972.

40:66A-31.10. Power of municipality, joint meeting or authority or private company to enter contract with county

Any municipality, joint meeting or authority with which a county is authorized to contract under the terms and provisions of this act shall have power, by ordinance duly adopted by its governing body to authorize its proper officials to enter into and execute for it a contract, for such periods of time and under such terms as are deemed proper and necessary, with a county, for the treatment and disposal of all or any specified part of the solid waste arising or collected in or by such municipality, joint meeting or authority, by

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the solid waste disposal facilities of such county and such contract shall be valid and binding upon the municipality, joint meeting or authority notwithstanding that no appropriation was made or provided to cover the estimated cost of such contract, and the governing body of the municipality, joint meeting or authority shall have full power and authority to do and perform all acts and things on the part of the municipality, joint meeting or authority to be done and performed under the terms and provisions of such contract. Any private solid waste or incinerator company or industry shall likewise have power to enter into a contract with a county for the treatment and disposal of the solid waste or the waste collected or discharged by it by the solid waste disposal facilities of a county.

P.L. 1970, c. 242, § 10, eff. Oct. 28, 1970. Amended by L.1971, c. 442, § 7, eff. Feb. 15, 1972.

40:66A-31.11. Bonds as legal investment; tax exemption

Notwithstanding any restriction contained in any other law, the State and all public officers, municipalities, counties, political subdivisions and public bodies, and agencies thereof, all banks, bankers, trust companies, savings banks and institutions, building and loan associations, savings and banking business, all insurance companies, insurance associations and other persons carrying on an insurance business, and all executors, administrators, guardians, trustees and other fiduciaries, may legally invest any sinking fund moneys or other funds belonging to them or within their control in any bonds of a county authorized pursuant to this act, and such bonds are hereby made and shall be authorized security for any and all public deposits. Any such bonds and the interest thereon shall be exempt from taxation except for transfer and inheritance taxes.

P.L. 1970, c. 242, § 11, eff. Oct. 28, 1970.

40:66A-31.12. Payments to county and ad valorem tax by municipality, joint meeting or authority

The chief fiscal officer of each municipality, joint meeting or authority which shall have entered into a contract pursuant to this act, shall cause to be paid to the county, at such times to be agreed upon, the amount of money certified to the municipality, joint meeting or authority by the county pursuant to this act. The power and obligation of such municipality, joint meeting or authority to provide for and make all such payments shall be unlimited and the sums necessary for such payment shall be included in each annual budget of such municipality, joint meeting or authority and such municipality, joint meeting or authority shall be irrevocably and unconditionally obligated to levy ad valorem taxes on all taxable property therein or service charges for users, as the case may be, without limit as to rate or amount to the full extent necessary to make all such payments in full as the same become due. If any part of the amount certified to a municipality, joint meeting or authority by a county, pursuant to this act, shall remain unpaid for 30 days following the date fixed for payment by the contract, the municipality, joint meeting or authority thus in default shall be charged with and liable for, and the

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chief fiscal officer thereof shall pay to such county interest upon the amount unpaid at the rate of 8% per annum.

P.L. 1970, c. 242, § 12, eff. Oct. 28, 1970. Amended by L.1971, c. 442, § 8, eff. Feb. 15, 1972.

40:66A-31.13. Payments to county by private companies; lien of unpaid amount; priority

Each private solid waste or incinerator company or industry which shall have entered into a contract with a county pursuant to this act, shall pay at such times as shall be provided in such contract to the contracting county, the sum of money certified to it by such county pursuant to this act, on or before the date provided for such payment in such contract. Any such sum of money so certified by a county shall be a lien in favor of such county on and against the property of such private solid waste or incinerator company or industry. If such sum of money or any part thereof is not paid to the contracting county on or before such contract payment date such county shall make and record, in the same manner as conveyances of interest in real property are recorded, a certificate setting forth the facts and giving notice of the existence and amount of such lien remaining unsatisfied. So far as permitted by law, such lien shall have priority over all other liens theretofore or thereafter attaching except those of Federal, State and local taxes.

P.L. 1970, c. 242, § 13, eff. Oct. 28, 1970.

40:66A-31.14. Construction of act; severability

The object and design of this act being the protection and preservation of public health, safety and welfare, this act shall be liberally construed and the powers granted and the duties imposed by this act shall be construed to be independent and severable. If any one or more sections, clauses, sentences or parts of this act shall for any reason be questioned in any court, and shall be adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remaining provisions thereof, but shall be confined in its operation to the specific provisions so held unconstitutional or invalid.

P.L. 1970, c. 242, § 14, eff. Oct. 28, 1970.

40:66A-31.15. Preemption of solid waste disposal system by incinerator authority

In the event an incinerator authority has been established in a county pursuant to the provisions of chapter 348 of the laws of 1948 (C. 40:66A-1 et seq.), the "incinerator authorities law, " no county shall establish any competitive solid waste disposal system within such county under the provisions of this act without the consent of such existing authority.

P.L. 1970, c. 242, § 15, eff. Oct. 28, 1970.